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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555 (JMP) ; 08-01420 (JMP) (SIPA)
- - - - -x
In the Matters of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.
- - - - -x
LEHMAN BROTHERS INC.,

Debtor.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

November 17, 2010
2:04 PM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

1
2 INITIAL SCHEDULING CONFERENCE re FirstBank Puerto Rico v.
3 Barclays Capital, Inc. [Adv. Case No. 10-04103]
4

5 PRETRIAL CONFERENCE re LBSF v. PT Mobile-8 Telecom Tbk [Adv.
6 Case No. 10-03808]
7

8 PRETRIAL CONFERENCE re Neuberger Berman LLC v. Lehman Brothers
9 Commercial Corp., et al. [Adv. Case No. 10-03610]
10

11 PRETRIAL CONFERENCE re Neuberger Berman LLC v. Lehman Brothers
12 Commercial Corp., et al. [Adv. Case No. 10-03612]
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25 Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Be seated, please. Good afternoon. We
4 have an adversary docket this afternoon that starts with First
5 Bank of Puerto Rico v. Barclays.

6 (Pause)

7 THE COURT: Good afternoon. This case has been around
8 for a while -- I'll take appearances, sure. I might as well
9 see who's here.

10 MR. MITCHELL: I'm sorry. Jeffrey Mitchell. I'm at
11 Gibbons, P.C. I'm here with Dan Weinberger and Jeffrey
12 Berkowitz.

13 MR. MORAG: Good afternoon, Your Honor. Boaz Morag,
14 Ari Mackinnon and Matthew Vanek from Cleary Gottlieb for
15 Defendant Barclays Capital.

16 THE COURT: Okay. I took a look at the file on this.
17 It appears to have been pending for a while in front of Judge
18 Daniels and I gather in September was referred to the
19 bankruptcy court. But the case has been pending for about a
20 year. I did not study everything that has gone on in the last
21 year and I just want to be clear as to what you need at this
22 point from me in terms of a procedures order.

23 MR. MITCHELL: Your Honor, we have discussed with
24 opposing counsel a scheduling order. We have not conducted any
25 discovery. There were two, I guess, procedural motions, motion

1 to dismiss at the beginning of the case that was heard in April
2 and then the motion to transfer which was heard late summer or,
3 I guess, early September. And Judge Daniels then referred it
4 to the bankruptcy court and we've been awaiting the delivery of
5 the file to the bankruptcy court which, as soon as we got that,
6 we came here for -- I guess to proceed now with discovery.
7 We're past the motion to dismiss and the transfer.

8 THE COURT: I take it there are no motions that remain
9 to be adjudicated and --

10 MR. MITCHELL: That's correct.

11 THE COURT: -- we're, in effect, starting fresh now.

12 MR. MORAG: Correct.

13 MR. MITCHELL: That's right. We're past the motion to
14 dismiss and motion to transfer. So we're now starting at
15 discovery.

16 THE COURT: Okay. And what's involved in that? And
17 then how much time do you think you need?

18 MR. MITCHELL: We prepared a draft -- we prepared a
19 draft document. We provided for the completion of fact
20 discovery by April 15th. And then there's a series of,
21 pursuant to the rules, document discovery, notices to be
22 served, I think, by December 15th, interrogatories by December
23 31st and, you know, a schedule that way. We have it here. I
24 can hand a copy up to Your Honor if you'd like to see it.

25 THE COURT: Sure. I'll take a look at it.

1 MR. MORAG: Your Honor, we discussed the schedule
2 beforehand and we're in agreement on the dates.

3 THE COURT: So there's nothing controversial here?

4 MR. MORAG: No.

5 THE COURT: At least not about scheduling.

6 MR. MORAG: Not between the parties.

7 THE COURT: Okay.

8 MR. MITCHELL: Not yet.

9 THE COURT: All right. So we have a dispositive
10 motion schedule for early next summer and a final pretrial date
11 to be inserted.

12 Let me just ask whether or not the parties have
13 considered alternative dispute resolution, mediation,
14 settlement discussions, informal discovery or anything that
15 might make it unnecessary for you to spend another year
16 visiting with me.

17 MR. MITCHELL: Judge Daniels had initially referred
18 the ca -- before he signed the motion to transfer, he had
19 referred the case to mediation. I think as we got into that
20 process, because we really haven't engaged in any discovery, it
21 was premature. And I think the positions of the parties at
22 least at this stage were, we're right, they're wrong on both
23 sides. And it may be premature to try to do that again at this
24 point. I think certainly we need to get through a document
25 discovery process, I think. Maybe some interrogatories.

1 Perhaps once we get into it a little bit and we visited with
2 Your Honor, if there had been some disputes, maybe that would
3 be the time. But I have a sense having gone through the
4 beginnings of a mediation process that it wasn't going to go
5 anywhere because the parties really had the positions that one
6 was right and the other -- and each party believes they're
7 right. And the mediator, I'm not sure, was going to be capable
8 of resolving that yet.

9 THE COURT: When you say "right", right on the facts
10 or right on the law or both?

11 MR. MITCHELL: We're entitled to our property back;
12 they're entitled to keep it. So that's some -- the issue is
13 who's entitled to the -- what we allege as the collateral and
14 whether the collateral was, in fact, transferred out of the
15 Lehman estate to Barclays as part of the sale or not.

16 THE COURT: Is there any dispute that the sixty-two
17 million dollars, more or less -- I think that's what this
18 involves -- is currently held by Barclays?

19 MR. MITCHELL: I think they dispute that all of it is
20 there. But I think they have accounted for most of it.

21 THE COURT: What's the story?

22 MR. MORAG: Your Honor, I think there are twenty-four
23 CUSIPs at issue. Twenty of the twenty-four were transferred to
24 Barclays in the repo that Your Honor is familiar with between
25 LBI and Barclays. We understand that the balance of the CUSIPs

1 were transferred at some point to Blackstone. We don't know
2 anything about that -- anything further about that.

3 With respect to Your Honor's question about the facts
4 versus the law, just if I could say in one sentence, this is a
5 situation where First Bank was a counterparty to LBSF, Lehman
6 Brothers Special Financing. That is the agreement under which
7 they posted this collateral, permitted LBSF to sell and
8 hypothecate the collateral. We believe the facts will show --
9 and we agree that we probably do need to do a little bit of
10 document discovery and exchange to be able to establish these
11 facts to First Bank's satisfaction. But we also have questions
12 about their facts -- that LBSF before the bankruptcy filings
13 did sell, as it was entitled to do, these twenty CUSIPs over a
14 period of time to LBI, Lehman Brothers Inc., which then used
15 them in its operations and used them in the -- for the Fed repo
16 and then subsequently in the Barclays repo. And that's the
17 first line of defense to this claim before you get to any other
18 issues under the UCC and so on.

19 So we concur that mediation is probably a concept or a
20 settlement conference with another bankruptcy -- whatever
21 alternative dispute resolution might be appropriate would
22 probably make most sense after initial document exchanges.

23 THE COURT: Probably make the most sense --

24 MR. MORAG: After initial document exchanges.

25 THE COURT: Okay. I'm not pressing the point. It's

1 just that it looks as if a fair amount of activity took place
2 prior to the reference from the district court to the
3 bankruptcy court. And we're now a full year into pending
4 litigation which you're just now starting in terms of merits
5 discovery. So I think it's just a concept that I think the
6 parties should keep in mind. At some point, which you're going
7 to know better than I'm going to know, it may be sensible to
8 determine what facts are undisputed and then see whether or not
9 it's possible to reach an understanding that avoids the
10 dispositive motion phase of the case. And if that's not
11 possible, we'll deal with that. And if we need a trial, we'll
12 have a trial. But the dates that you've come up with look fine
13 to me. I'll need a disk.

14 MR. MITCHELL: Pardon?

15 THE COURT: I'll need a disk.

16 MR. MORAG: We'll arrange that.

17 MR. MITCHELL: Okay.

18 THE COURT: You'll have to provide me -- if I'm going
19 to enter this as an order, you'll just have to give me the
20 necessary tools for that.

21 MR. MORAG: Understood. We'll arrange it.

22 THE COURT: Okay. Fine. And unless there are issues,
23 I probably won't be seeing you for a while.

24 MR. MORAG: Understood.

25 MR. MITCHELL: Thank you, Your Honor.

1 THE COURT: Okay.

2 I have an old calendar. Is PT Mobile the next one?
3 Pt Mobile-8?

4 (Pause)

5 MS. LOISEAU: Good afternoon, Your Honor.

6 THE COURT: Good afternoon.

7 (Pause)

8 THE COURT: Please proceed.

9 MS. LOISEAU: Sure. Holly Loiseau on behalf of Lehman
10 Brothers Special Financing, a plaintiff in this adversary
11 proceeding. Your Honor, Lehman Brothers Special Financing
12 filed an adversary complaint on October 1st and that complaint
13 was served by mail facsimile and e-mail on the defendant, PT
14 Mobile-8. PT Mobile-8 is located in Jakarta, Indonesia. On
15 October 4th, service was effected. We have yet to receive any
16 answer or response to the complaint and it's past the thirty
17 day period. And as of yesterday, when we checked the docket,
18 there had been no response to the complaint. So this morning,
19 the debtor filed a request for entry of default with the clerk.
20 If that request is granted then the debtor intends to move for
21 a default judgment in the matter and then to proceed with that
22 default judgment.

23 THE COURT: I'm familiar with this because this came
24 up on the omnibus docket, I believe it was last month, for the
25 first time. And I guess my only question in respect of the

1 default which you're going to be seeking is the issue of
2 service of the complaint and actual notice to PT Mobile-8
3 Telecom of the pending action. Is there any question in your
4 mind as to the sufficiency of service given that we're dealing
5 with the Jakarta entity?

6 MS. LOISEAU: No, Your Honor. And the reason that, at
7 least in my mind, there's no issue regarding service is
8 actually the debtor did file an affidavit of service that it
9 was served by international mail, facsimile and e-mail.
10 Also -- and we had a receipt that it had been received by
11 facsimile. We also did try to effect service personally
12 through local counsel in Jakarta on several occasions and that
13 attempt for hand delivery was refused by PT Mobile-8. But the
14 other -- because we have tried several methods of service, I
15 don't believe that there is any notice issue with respect to
16 them having receipt of the complaint at this point.

17 THE COURT: Okay. Well, since there's no one here at
18 least visibly representing the interest of PT Mobile-8, we'll
19 proceed with your efforts to obtain a default judgment and
20 presumably thereafter to obtain recognition of that judgment in
21 Jakarta.

22 MS. LOISEAU: Thank you, Your Honor.

23 THE COURT: I don't think there's anything other than
24 whatever proceedings take place in respect of the default. So
25 that's it for this one. This is a short afternoon. There was

1 one other matter that was recently adjourned. I think that --
2 I know there are other people in the courtroom but I assume
3 that you're just watching and that there's no one else who's
4 expecting to be heard this afternoon.

5 MS. LOISEAU: It's my understanding from my colleagues
6 that the other matters that were on the docket had been
7 adjourned for the afternoon.

8 THE COURT: Fine. We are then adjourned for the day.
9 See you next time.

10 MS. LOISEAU: Thank you.

11 (Whereupon these proceedings were concluded at 2:20 p.m.)
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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' motion requesting entry of an order approving consensual scheduling order granted	11	13

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET**D-486)

Veritext

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Date: November 18, 2010